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No. 91-1536

Supreme Court, U.S.
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In The

# Supreme Court of the United States

OCTOBER TERM, 1991

IRENE O'CONNELL KRUSE AND FREDERICK E. WATSON,
*Petitioners,*
vs.
COURT OF APPEAL OF THE STATE OF CALIFORNIA FOR THE FIRST APPELLATE DISTRICT; WILLIAM A. NEWSOM, JOHN T. RACANELLI, IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES AS MEMBERS OF DIVISION ONE OF THE SAID COURT OF APPEAL; SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SONOMA; WINSLOW CHRISTIAN; BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION; LELAND PARACHINI, STEINBERG, FLINN, MATZGER & MELNICK; DAVID B. FLINN,
*Respondents.*

## OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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## QUESTIONS PRESENTED

1. Should this Court review a Federal District Court decision that the *Rooker-Feldman* doctrine precluded a federal court from deciding issues already raised and decided by the California Supreme Court and already raised by a Petition for Writ of Certiorari in this Court when the District Court decision was based squarely on *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and did not involve novel or unsettled federal legal issues?

2. Should this Court depart from the usual rule that it does not review state law issues where the state law issue of *res judicata* is well-settled and arises from a unique procedural posture that affects only the parties to this action?

3. Should this Court reconsider *Pulliam v. Allen*, 466 U.S. 522 (1984) at Petitioners' request when they have conceded that the judicial Respondents should be dismissed and *Pulliam* has no bearing on the *Rooker-Feldman* or *res judicata* defenses that bar this action against the remaining Respondents?

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This opposition is filed on behalf of Respondents Winslow Christian; Bank Of America National Trust & Savings Association (the "Bank"); Leland Parachini, Steinberg, Flinn, Matzger & Melnick; and David B. Flinn (the "Bank Respondents")[1/] who respectfully request that this Court deny the Petition For Writ Of Certiorari filed by Petitioners Irene O'Connell Kruse ("Kruse") and her attorney Frederick E. Watson ("Watson").

**INTRODUCTION**

This is the second time Kruse has filed a Petition for a Writ of Certiorari in connection with the basic facts of this case.

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1/ Bank of America, N.T. & S.A. owns less than a 100% interest in the following subsidiaries: Banco Colombo Americano, Bank of America S.A.E., The Electronic Payments Exchange, Inc., and Bank of America International Limited. Bank of America N.T. & S.A. is itself wholly owned by BankAmerica Corporation, all of the subsidiaries of which are wholly owned.

In the first Petition, Kruse, represented by Watson, claimed that three Justices of the California Court of Appeal (two of whom are respondents here) violated her Fourteenth Amendment rights by their decision to reverse her $3.77 million dollar state court judgment against the Bank of America. *See Kruse v. Bank of America*, 202 Cal.App.3d 38, 248 Cal.Rptr. 217 (1988). That Petition was denied on January 23, 1989. *Kruse v. Bank of America*, 488 U.S. 1043 (1989) (No. 88-934).

Upon the denial of that Petition, Kruse, again represented by Watson, switched forums. She brought a Section 1983 action in federal District Court, claiming that the defendant Justices, the Bank and its inside and outside counsel had conspired to violate her federal constitutional rights by reversing her state court judgment. Those claims were dismissed by the District Court based on

*res judicata* and the *Rooker-Feldman* doctrine. Sanctions were imposed against attorney Watson under Federal Rule of Civil Procedure 11 for filing a factually frivolous complaint. The Ninth Circuit Court of Appeals affirmed.

This second Petition for a Writ of Certiorari again brings before this Court Kruse's claims that her federal constitutional rights were violated by the Court of Appeal Justices. Like her first Petition, this one also should be denied, for the following reasons:

(1) The application of the *Rooker-Feldman* doctrine by the District Court did not, contrary to Kruse's assertion, raise an important issue of federal law. The decision fell squarely within long-established doctrine, created by this Court, that a federal legal issue actually decided by a state court cannot be reviewed by a federal district court. *See Rooker v.*

*Fidelity Trust Co.*, 263 U.S. 413, 415 (1923). There is no need for this Court to address whether the issues decided by the state courts were "inextricably intertwined" with those presented in the federal case, because Kruse raised the *same* federal constitutional issues in both state and federal court.

(2) The lower court's application of *res judicata* to bar relitigation of Kruse's claims does not raise an issue of federal law, much less an important issue. Based on 28 U.S.C. § 1738 and *Migra v. Warren City School District Board of Education*, 465 U.S. 75 (1984), the federal District Court applied California state law to determine whether the decision of the California courts should be given preclusive effect. There are no extraordinary circumstances in this case that warrant departure from the usual rule

that this Court does not review state law issues.

(3) Finally, Petitioners' curious concession that *Pulliam v. Allen*, 466 U.S. 522 (1984) should be reconsidered and held to preclude claims for injunctive relief against the judicial Respondents has no effect on these Bank Respondents. Nothing in the record supports Petitioners' argument that the District Court's disagreement with *Pulliam* motivated its decision. Moreover, even if it did, dismissal of the judicial Respondents does not change the application of *res judicata* or *Rooker-Feldman* to bar the claims brought against these non-judicial Bank Respondents.

This opposition does not address the question presented concerning the attorneys' fees imposed against Watson under Rule 11 because none were requested by these Respondents.

## STATEMENT OF THE CASE

### A. The State Court Action: *Kruse v. Bank of America*

This litigation originated in 1980 when Kruse, represented by Watson and other counsel, filed *Kruse v. Bank of America National Trust and Savings Association* in Sonoma County Superior Court in California. In that state court action, Kruse claimed that the Bank fraudulently induced her to transfer, to her detriment, a controlling interest in her family apple-growing and processing business.

In July of 1985, a Sonoma County jury awarded Kruse $2.77 million in compensatory damages and $6.675 million in punitive damages. Judgment was entered on the verdict following Kruse's acceptance of a remittitur of the punitive damage award to $1 million. The Bank appealed.

The Bank's appeal was heard and decided by Justices Racanelli, Newsom and

Elkington[2/] of Division One of the First Appellate District of the State of California. They unanimously reversed the jury verdict on the ground of insufficient evidence. After the Court of Appeal issued its decision, Kruse filed petitions in the Court of Appeal for rehearing and requesting that Justices Racanelli and Newsom disqualify themselves. The petitions were denied on June 17, 1988.

Denied relief in the Court of Appeal, Kruse filed with the California Supreme Court two separate but related documents: (1) a Petition For Review of the Court of Appeal's decision, and (2) a Motion to Take Evidence Under Rule 23(b), California Rules of Court, seeking discovery and an evidentiary hearing on her claims that Justices Racanelli and Newsom should be disqualified on federal constitutional grounds. Kruse submitted voluminous briefs

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2/ Justice Elkington is deceased.

and evidentiary material in support of both the Petition and the Motion.

Both submissions raised the identical claims later made in appellant Kruse's Section 1983 Complaint -- that her federal constitutional rights had been violated because the Court of Appeal panel: (1) reversed her judgment on legal theories different from those upon which she had recovered; (2) failed to apply properly state appellate standards of review which required the Court to view the evidence in the light most favorable to the judgment, and (3) included justices who were disqualified for bias.

For example, in both cases, Kruse claimed that Justice Newsom had a long-standing relationship with the Bank through his family and the J. Paul Getty family, that the Bank had made loans to Justice Newsom to influence his decision in the *Kruse* case and a prior case, that the

Justices were former colleagues of Winslow Christian, a retired justice who became Director of Litigation for the Bank, and that the Justices may have been recommended by Mr. Christian for their positions.

On September 1, 1988, the California Supreme Court denied both the Petition For Review and the Motion To Take Evidence, stating,

> The requests to take further evidence are DENIED because petitioners have not made a prima facie showing of conflict of interest or bias, much less a deprivation of due process of law.
>
> The petitions for review are DENIED.

*See* Petitioners' Appendix F.

After unsuccessfully seeking a rehearing in the California Supreme Court, Kruse's attorneys petitioned this Court for a writ of certiorari, reciting -- and in some instances augmenting -- their charges against the Court of Appeal justices. Kruse argued, as she had to the California Supreme Court, that the due process clause

of the Fourteenth Amendment was violated by: (1) Justice Newsom's close legal, business and personal relationship to the Bank of America, (2) the participation of one biased justice on a panel of three, (3) the state Court of Appeal's reversal on legal theories and issues alleged to be different from those on which the case was tried and (4) the state Court of Appeal's failure to view the evidence and inferences in the light most favorable to the judgment. That Petition was denied.

**B. The United States District Court Action: *Kruse v. Court of Appeal, et al.***

In early 1989, Kruse, again represented by Watson, filed a complaint under 42 U.S.C. § 1983, seeking injunctive and declaratory relief against the courts and the individual justices and over $400 million in damages against the non-judicial defendants.

The Complaint sought redress for the same alleged deprivations of constitutional rights that previously had been presented to, and ruled upon by, the California Supreme Court and presented to this Court. The only new matter included in the federal pleadings was a prodigious quantity of alleged "evidentiary" material and numerous conclusory assertions purporting to interpret that "evidence," all culminating in a charge that Justice Newsom had been bribed and blackmailed by, and conspired with, the Bank and its lawyers, to "fix" the *Kruse* appeal and earlier actions involving the Bank.

Each defendant (except the Sonoma County Superior Court) moved to dismiss plaintiff's claims pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), on two principal grounds: (1) that plaintiff's claims were barred by *res judicata* and collateral estoppel as a

result of the California Supreme Court's decision that appellant Kruse had not made out "a prima facie showing of conflict of interest or bias, much less a deprivation of due process of law;" and (2) that the District Court had no jurisdiction over Kruse's claims, pursuant to the *Rooker-Feldman* doctrine, because it would be required to review the merits of a state-court decision. The Court of Appeal and Justice Newsom requested that the District Court assess sanctions against Watson.[3/]

On August 14, 1989, the District Court granted defendants' dismissal motions from the bench, and on August 21, 1989, filed a written memorandum and order to the same

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3/ The Court of Appeal also moved to dismiss Kruse's claims as barred by the Eleventh Amendment to the United States Constitution, while the judicial defendants moved to dismiss Kruse's claims for injunctive relief because she had an adequate remedy at law and could make no showing of any threat of future injury. Justice Newsom also moved to strike or, in the alternative, to adjudicate summarily plaintiff's allegations of bribery, blackmail and conspiracy.

effect. *See* Petitioners' Appendix C. It later granted the judicial defendants' Rule 11 motions, stating that Watson would be required to pay the reasonable attorneys' fees and costs expended by the Court of Appeal, Justice Racanelli and Justice Newsom to oppose Kruse's Complaint and Watson's Rule 11 submission. *See* Petitioners' Appendix D. On August 22, 1990, after further briefing, the Court ordered Watson to pay a total of $206,475.70 in sanctions within 90 days. *See* Petitioners' Appendix E.

On October 24, 1991, the Court of Appeals for the Ninth Circuit affirmed the District Court's decision in all respects and awarded appellees double costs pursuant to 28 U.S.C. § 1912 and Rule 38 of the Federal Rules of Appellate Procedure. *See* Petitioners' Appendix A.

## REASONS FOR DENYING THE PETITION

### I. The Petition Does Not Raise An Important Issue of Federal Law.

#### A. The Decision That Federal Jurisdiction Was Barred By The *Rooker-Feldman* Doctrine Was Not Based On "Unsettled" Law But On Established Decisions Of This Court.

Petitioners argue that this Court should take the opportunity to define the "inextricably intertwined" language used in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), which they assert was improperly applied in Kruse's case by the District Court. According to Petitioners, the decision by the California state courts was not "inextricably intertwined" with their federal Section 1983 action because the state law tort claims tried in the state action were unrelated to the Section 1983 claims raised in the federal action. (Petition at 11-12.)

Petitioners attempt to manufacture an "important" issue of federal law where none

exists. Contrary to Petitioners' assertion, their argument does not involve an application of the "inextricably intertwined" concept of *Feldman*. This is because Petitioners' argument is based on a misrepresentation of the record below. They ignore the fact that the state courts did not just decide Kruse's state tort claims as they allege, but also decided the *very same* federal constitutional issues presented by Kruse's Section 1983 case.

When the California Supreme Court rendered its decision that "petitioners have not made a prima facie showing of conflict of interest or bias, much less a deprivation of due process of law" (*see* Petitioners' Appendix F), it was responding to the *same federal constitutional claims* later presented by Kruse in her federal court Section 1983 action. Those claims were that the Justices had (1) switched theories, (2) applied an improper standard

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of review, and (3) been biased in their decision due to the Bank's influence over Justice Newsom. Thus, contrary to Petitioners' argument, the issue raised in their Petition does not implicate *Feldman*'s "inextricably intertwined" rule. The issues presented in the state and federal actions were not different; they were the same.

Petitioners acknowledge that under *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415 (1923), where federal law questions "actually arose" and were decided by the state court, a federal district court has no jurisdiction, because a decision would amount to federal appellate review of the state court decision. The only avenue of review from the decision of the California Supreme Court was by Petition for Writ of Certiorari to this Court -- an avenue pursued and exhausted by Kruse.

Moreover, even if one accepted Petitioner's definition of "inextricably intertwined," this case falls squarely within that definition. In this case, in Petitioners' own words, "federal law was applicable to and had a controlling bearing upon, the decision to be made on the merits in the earlier state court action." (Petition at 10.) In the earlier state action, the California Supreme Court considered and decided Kruse's federal constitutional claims.

Finally, not only is Petitioner's "inextricably intertwined" argument based on an incomplete representation of the record, but it was not an argument made to the courts below. There, petitioners argued that *Rooker-Feldman* barred only the relitigation of state court decisions "on the merits," not decisions on "procedural" issues. For good reason, this argument apparently has been abandoned.

## B. The Application Of *Res Judicata* Was Based On State Not Federal Law.

### 1. Only State Law Issues Are Involved.

Petitioners attempt to transform a decision based on the state law of *res judicata*, not ordinarily reviewable by this Court, into a federal legal issue. They try to bootstrap their claims that the District Court erroneously applied state *res judicata* principles on what constitutes a decision "on the merits" into a violation of 28 U.S.C. § 1738. But there is no issue of federal law here, only a dispute over the application of the California law of *res judicata*.

Section 1738 requires that federal courts give California state judicial proceedings "the same full faith and credit . . . as they have by law or usage" in the California courts. 28 U.S.C. § 1738. State law *res judicata* principles are to be applied by the federal courts to

determine the preclusive effect in federal court of state court decisions. *Migra v. Warren City School Dist. Bd. of Education*, 465 U.S. 75, 81 (1984). There is no question that the federal District Court looked to California state law, not to federal or any other law, to determine the preclusive effect of the determinations made by the California state courts. *See* Petitioners' Appendix C. Thus, no violation of Section 1738 or *Migra* is presented, but only an issue as to the correct application of state law principles.

Only under exceptional circumstances does this Court grant certiorari to decide questions of state law. *See Haring v. Prosise*, 462 U.S. 306, 314 n.8 (1983) ("standing alone, a challenge to state-law determinations by the Court of Appeals would rarely constitute an appropriate subject of this Court's review"); *Burks v.*

*Lasker*, 441 U.S. 471, 486 (1979) ("we did not grant certiorari to decide a question of state law"); *Pierson v. Ray*, 386 U.S. 547, 558 n.12 (1967) ("we do not ordinarily review the holding of the Court of Appeals on a matter of state law . . . ."). In this case, no exceptional circumstances warrant departure from this Court's usual practice.

**2. The District Court Correctly Applied Established Principles of California Law.**

Were this Court to review the state law issues considered by the lower courts, however, there is no important principle at issue. The District Court followed established California law in finding that the state courts had rendered a decision on the merits to be given preclusive effect. Moreover, the case arose out of a unique procedural posture that is unlikely to be repeated.

**(i) The California Supreme Court Had Jurisdiction To Decide Kruse's Claim That The State Court Of Appeal Justices Should Be Disqualified For Bias.**

Petitioners argue that the California Supreme Court's decision is not *res judicata*, because the Court declined to exercise its discretion to assume the jurisdiction required to render a decision on the merits. (Petition at 13-14.) To the contrary, the Court clearly had and exercised its jurisdiction.

Again, Petitioners ignore that Kruse did not merely file a Petition For Review of the Court of Appeal decision in her state lender liability case. She also filed with the California Supreme Court an independent, collateral proceeding for judicial disqualification. The California Supreme Court's jurisdiction to hear and decide an issue concerning disqualification of a justice of the Court of Appeal is

confirmed by *Kaufman v. Court of Appeal*, 31 Cal.3d 933, 184 Cal.Rptr. 302 (1982). *Kaufman* established that a disqualification claim against a Court of Appeal justice must first be made to the appellate judge in question and then, if the judge does not recuse himself or herself, by appeal to the California Supreme Court. In this case, the California Supreme Court ruled on Kruse's appeal when it held that she had not made a "prima facie showing of conflict of interest or bias, much less a deprivation of due process of law." *See* Petitioners' Appendix F.

Moreover, notwithstanding Petitioners' present argument that Kruse only filed a standard Petition For Review in the Supreme Court (Petition at 13-14), her position was to the contrary in the Supreme Court. In a supplemental letter to her Petition for Review, Kruse told the Court:

> [T]he question of violation of the federal constitutional rights of

> Plaintiff arose for the first time in the Court of Appeal, from the conduct of that Court, in allegedly depriving Mrs. Kruse of her property (i.e., her $4 million judgment) without the due process of law and equal protection guaranteed under the Fourteenth Amendment. Thus, this Court is the sole and only California State Court of competent jurisdiction to review those federal constitutional claims, and vacate the Court of Appeal decision, if those claims are determined to be well-founded.

Kruse was correct: her collateral attack on the Court of Appeal decision gave rise to a whole new case. Under *Kaufman*, first the California Court of Appeal and thereafter the California Supreme Court had jurisdiction to hear her request for disqualification.

**(ii) The California Supreme Court's Determination Was An Adjudication On The Merits.**

Under *Kaufman*, the bias claim arose and was first considered in the Court of Appeal. As Kruse has admitted, her only avenue of appeal from the Court of Appeal's decision on that claim was to the

California Supreme Court. Where "[t]he sole means provided by law for judicial review" is to the Supreme Court, a "petition . . . for writ of review . . . serves in effect the office of an appeal." *Consumers Lobby Against Monopolies v. Public Utilities Commission*, 25 Cal.3d 891, 901, 160 Cal.Rptr. 124, 129 (1979) ("*CLAM v. PUC*"). In such a case, a "denial of a petition for writ of review is 'a decision on the merits both as to the law and the facts presented in the review proceedings.'" *Id.*

Petitioners argue that denial of a Petition For Review to the California Supreme Court is never on the merits. But that position was expressly rejected (long ago) by this Court in *Napa Valley Electric Co. v. Board of Railroad Commissioners*, 251 U.S. 366 (1920). In *Napa Valley*, the Supreme Court of California had refused, without written decision, to issue a writ

annulling orders of the Railroad Commission. The plaintiff then sought to enjoin enforcement of the Commission's orders in federal District Court, which dismissed the proceedings on the ground the Supreme Court's action was *res judicata*. On appeal to this Court the plaintiff argued that since no writ had been issued, the California Supreme Court "instead of hearing refused to hear, instead of adjudicating refused to adjudicate, and that from this negation of action or decision there cannot be an assertion of action or decision with the estopping force of res judicata." *Id.* at 371. This Court rejected this contention, holding that "the denial of the petition was necessarily a final judicial determination, based on the identical rights" and that "[s]uch a determination is as effectual as an estoppel as would have been a formal judgment." *Id.* at 372-373.

The rule set forth in *CLAM v. PUC* and *Napa Valley* has been acknowledged in numerous other cases.[4/] None require the formalities that appellants argue are essential to a decision on the merits: *i.e.*, grant of the Petition For Review, oral argument attended by four justices, a decision in writing with reasons stated, or publication of a written decision in the official reports. *See Napa Valley Electric*

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4/ *Geibel v. State Bar*, 14 Cal.2d 144, 93 P.2d 97 (1939) (denial of a petition which attacked the qualification of a Board of Governors' member on grounds of conflict of interest was *res judicata* on the issue of disqualification); *Funeral Directors Association v. Board of Funeral Directors*, 22 Cal.2d 104, 107-08, 136 P.2d 785, 787 (1943) (confirming that *Napa Valley* and *Geibel* were instances where "this court was the sole tribunal available in the premises, and our denial of the earlier petition necessarily included a determination of the merits thereof"); *Union City v. Southern Pacific Co.*, 261 Cal.App.2d 277, 279, 67 Cal.Rptr. 816, 818 (1968) (denial of petition for review from PUC decision was a "ruling on the merits" even though "without opinion"); *Pacific Telephone & Telegraph Co. v. P.U.C.*, 600 F.2d 1309, 1311-14 (9th Cir.), *cert. denied*, 444 U.S. 920 (1979) (acknowledging the continued vitality of *Napa Valley*).

*Co.*, 251 U.S. at 371 (irrelevant that no writ had issued, no appearance made by the parties and no hearing held on a certified record).[5/]

Finally, even if, as Petitioners argue, Kruse filed only a standard Petition For Review in the Supreme Court, the Court's denial of that Petition is still "on the merits" because it unequivocally reached the merits of Kruse's disqualification claims. As the California Supreme Court previously has stated:

> The rule is well settled that a denial by this or the appellate court of an application for a writ without opinion "is not res judicata of the legal issues presented by the application unless the sole possible ground of the denial was that the court acted on the merits, or *unless it*

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5/ The September 19, 1988 letter from the Office of the Clerk of the Supreme Court (*see* Petitioners' Appendix G), does not change this result. The letter from the Clerk is not a decision of the Supreme Court. Moreover, it addresses only the rules for rehearing. It does not address the *res judicata* effect of a denial of a petition when an appeal to the Supreme Court is the sole avenue of review.

> *affirmatively appears that such denial was intended to be on the merits.*"

*Hagan v. Superior Court*, 57 Cal.2d 767, 770, 22 Cal.Rptr. 206, 208 (1962) (emphasis added) (citations omitted).[6/]

**(iii) The United States Supreme Court Authority Cited By Petitioners Does Not Control State Law On *Res Judicata*.**

Petitioners rely on a series of United States Supreme Court cases (all addressing the Court's jurisdiction to conduct

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6/ *See also CLAM v. PUC*, 25 Cal.3d at 901 n.3. This principle has been applied by the Ninth Circuit and the California appellate courts. *See Nakash v. Marciano*, 882 F.2d 1411, 1414-15 (9th Cir. 1989) ("when a court denies or grants an extraordinary writ with a written opinion, that decision has 'ordinary res judicata effect'" (citations omitted)); *No Slo Transit, Inc. v. City of Long Beach*, 197 Cal.App.3d 241, 260-61, 242 Cal.Rptr. 760, 771 (1987) (denial of a writ of mandate to compel discovery "was intended to be a decision on the merits with its unequivocal suggestion to appellants as to how they might further proceed"); *Richer v. Superior Court*, 63 Cal.App.3d 748, 756, 134 Cal.Rptr. 52, 56 (1976) (denial of petition for writ of prohibition with a "statement of the reasons" was on the merits and thus became law of the case.)

certiorari review under 28 U.S.C. § 1257) to argue that a denial of review by the California Supreme Court, even if reasons are given, is not a decision on the merits. That reliance is misplaced for two reasons.

First, the decisions cited by Petitioners neither address the issue of *res judicata*, nor purport to determine California law on when a decision of the California Supreme Court is on the merits. Rather, they consider only the *federal* question of the Supreme Court's jurisdiction under 28 U.S.C. § 1257. Those Supreme Court cases that directly address the *res judicata* effect of a decision of a state court, squarely hold that it is a question of state, not federal law. *See, e.g., Migra v. Warren City School Dist. Bd. of Education*, 465 U.S. at 81.

Second, even assuming that Petitioners' cases are relevant to the *res judicata* issue, they support Respondents, not

Petitioners. In *American Railway Express Company v. Levee*, 263 U.S. 19, 20 (1923), the Court recognized, as it did in its *res judicata* decisions, that whether a state appellate court has reached the merits of a case is determined by state practice and procedure; the Court relied on the Louisiana State Constitution to determine that the State Supreme Court had declined to exercise jurisdiction. Similarly, in *Norfolk & Suburban Turnpike Co. v. Commonwealth of Virginia*, 225 U.S. 264, 269 (1912), the Supreme Court merely declared a rule of convenience for itself in avoiding confusion over which state appellate court had rendered the final decision subject to review by the Supreme Court. The Court determined "for the guidance of suitors in the future" to look to the face of the record for "an affirmance in express terms of the judgment or decree sought to be reviewed . . . ." *Id.* at 269. This rule

of convenience was apparently applied in *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157, 160-61 (1954), which cited the *Norfolk* case. Thus, these cases explore only the issue of the proper state court from which an appeal should be taken. They say nothing about California law on *res judicata*.

### 3. Reconsideration of *Pulliam v. Allen* Is Not Properly Raised By Petitioners, And In Any Event, Has No Bearing On These Respondents.

In a curious argument, Petitioners ask this Court to reconsider *Pulliam v. Allen*, 466 U.S. 522 (1984) and decide whether there is complete judicial immunity in this action, not just against claims for damages, but also against claims for injunctive relief. Their motivation for making this argument is unclear. It does not benefit them, but the judicial Respondents. Petitioners in fact urge this Court to "affirm the dismissal of the state

Justices and Courts on the basis of judicial immunity." (Petition at 23.)

Apparently Petitioners believe that by urging dismissal of the judicial Respondents, they will make their claims against the nonjudicial Respondents more palatable to the Court. Although there is nothing in the record to support their assertion (*see* Petitioners' Appendix C), they speculate that the District Court dismissed this action based on *res judicata* and *Rooker-Feldman* "to avoid following *Pulliam*, and to confer judicial immunity against equitable relief by indirect means." (Petition at 7-9.) They seem to fear that this Court will deny their Petition for the same reasons.

If Petitioners believe, as they argue, that the judicial Respondents have absolute immunity, they should simply dismiss them. In fact, based on their request that the judicial Respondents be dismissed, they may

be judicially estopped from further prosecution of claims against those Respondents. Moreover, Petitioners have no standing to make the argument, because they can claim no benefit (except a speculative and questionable tactical benefit) from a decision expanding *Pulliam*.

In any event, this Court should reject Petitioner's argument. The application of *Pulliam v. Allen* to the judicial Respondents has no effect on the case against these non-judicial Respondents. The doctrines of *res judicata* and *Rooker-Feldman* have the same force and effect whether or not the judicial Respondents are dismissed. As demonstrated above, those doctrines create an absolute bar to prosecution of Kruse's Section 1983 claims against all Respondents.

## CONCLUSION

For the foregoing reasons, the Bank Respondents request that the Petition be denied.

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Respectfully submitted,

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